

EIGHTH DIVISION

[CA-G.R. CV. NO. 83047, September 26, 2006]

**PATERNO PEJANO, PLAINTIFF-APPELLEE, VS. H.R. LINES, INC.,
DEFENDANT-APPELLANT.**

D E C I S I O N

CARANDANG, J.:

Defendant-appellant H.R. Lines, Inc, by way of appeal under Rule 41 of the 1997 Rules of Civil Procedure, assails the July 15, 2004 Decision¹ of the Regional Trial Court of Manila, Branch 55 rendered in Civil Case No.

02-104569 for Damages. The RTC held H.R. Lines, Inc. liable to pay plaintiff-appellee Paterno Pejano damages and attorney's fees, as follows:

"WHEREFORE, foregoing considered, judgment is hereby rendered for plaintiff, and against defendant, as follows:

1. Ordering defendant to pay plaintiff actual damages in the amount of Php29,742.00 for the expenses at National Orthopedic Hospital and Php17,346.00 for the hospital bill of Makati Medical Center;
2. Ordering defendant to pay plaintiff compensatory damages in the amount of Php 156,000.00 for loss of earnings as a consequence of the permanent partial disability that was suffered by the latter;
3. Ordering defendant to pay plaintiff the amount of Php 200,000.00 as and by way of moral damages;
4. Ordering defendant to pay plaintiff attorney's fees in the sum equivalent to twenty five percent (25%) the aggregate of the foregoing amounts, as well as the costs of suit.

SO ORDERED."

Paterno Pejano's complaint² for damages traces its roots from a vehicular accident involving a public utility bus with plate number NXP687 owned and operated by H.R. Lines, Inc. and driven by Artemio Ramos.

According to Paterno Pejano, the accident occurred at around 7:30 a.m of April 30, 2002. He was riding on his bicycle traveling northwards along the East Service Road in Taguig when a public utility bus of H.R. Lines, Inc. cruising along the same direction, sideswiped the left handle bar of his bicycle. He fell down on the road and before he can get up, the rear right wheel of the bus ran over and crushed his left leg. The bus did not stop and continued to run for about thirty (30) meters more until Taguig police stopped it, directed the driver and conductor to return to where

he was lying down. Upon the order of the Taguig police, he was brought initially, at the Makati Medical Center wherein he was given treatment at the Emergency Room for almost five (5) hours; thereafter, he was transferred to National Orthopedic Hospital where his leg was amputated.

H.R. Lines disclaimed liability for the injuries suffered by Paterno Pejano reasoning that the accident was due to the latter's negligence. The driver of the bus, Artemio Ramos, testified³ that in the morning of April 30, 2002, he was driving the bus with plate no. 687, coming from the garage along East Service Road bound for Baclaran. Along the northward lane, there was an excavation drainage about 16 feet in length and covered by a fence of GI sheets, thus, narrowing the said lane. While passing that portion, Pejano who was riding a bicycle tried to overtake the bus on the right side, bumped the right front side of the bus and fell down. His leg was ran over by the right rear wheel of the bus.

The trial court found that it was the bus driver's negligence that caused the unfortunate accident when he tried to overtake plaintiff's bicycle at the narrowed road because of the fenced excavation. The trial court likewise applied the theory that the negligence of the employee-driver is presumed to be the negligence of H.R. Lines, Inc. as employer since the latter failed to present evidence to show that in order to prevent damage, it observed all the diligence of a good father of a family in the selection and supervision of its employees.

Defendant-appellant appealed, assigning the following errors:

THE TRIAL COURT ERRED IN FINDING THAT THE APPELLANT'S DRIVER AS AT FAULT.

THE TRIAL COURT ERRED IN AWARDING MORAL DAMAGES FOR THE APPELLEE.

After a careful review of the evidence on record and a thorough study of defendant-appellant's arguments on the first assigned error, We find no cogent reason to reverse the factual findings of the trial court that it was the bus driver's negligence that caused the accident. The claim of the bus driver that Pejano's bicycle tried to overtake the bus and thereafter bumped the right front side of the bus is incredible and contrary to human experience. As correctly explained by the trial court in the assailed decision: "*x x x it is difficult to sustain the assertion that plaintiff's small and pedal-powered bicycle had tried to overtake the defendant's elongated and machine-powered bus in that narrow part of the road, much more, to bump the rear right portion of the bus. By reason of the great difference in the size of the bus and the bicycle of plaintiff, defendant's assertion is not quite believable. The fact is, and remains to be, that the unfortunate accident can be attributed to the lack of care and apparent negligence of defendant's bus driver, Artemio Ramos.*"

Besides, from the very own testimony of the bus driver, he did not actually see Pejano's bicycle overtaking the bus. Artemio Ramos testified:

Atty. Talaboc:

Mr. Witness, when you saw this victim in your mirror, you stated earlier as riding a bicycle, so, you did not see him actually overtake you because you stated earlier that you